

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRANDEIS UNIVERSITY and)	
GFA BRANDS, INC.,)	
)	Nos. 1:12-cv-01508
<i>Plaintiffs,</i>)	1:12-cv-01509
v.)	1:12-cv-01510
)	1:12-cv-01511
KEEBLER CO.;)	1:12-cv-01512
FAMOUS AMOS CHOCOLATE CHIP)	1:12-cv-01513
COOKIE COMPANY, LLC;)	
MURRAY BISCUIT CO. LLC;)	
VOORTMAN COOKIES LTD.;)	Judge Richard A. Posner.
BREMNER FOOD GROUP, INC.;)	
COOKIE SPECIALTIES INC.;)	
TOPCO ASSOCIATES LLC;)	
THE PILLSBURY COMPANY, LLC;)	
UNILEVER UNITED STATES, INC.;)	
CONOPCO, INC.; and)	
NESTLÉ USA, INC.,)	
)	
<i>Defendants.</i>)	
)	

ORDER OF OCTOBER 31, 2012

Pursuant to my order of October 18 [dkt. 369], Bremner has produced a document listing the ingredients and production processes of its accused products over time, but it did so only on October 28. That was well after October 23 and 24, the deposition dates for Bremner's Rule 30(b)(6) witnesses, who were unprepared to testify regarding their designated topics; the Topco witness deposed on October 23 was similarly unprepared. Bremner and Topco are hereby ordered to pay the expenses, costs, and fees associated with Brandeis's motion to compel production of marketing and contract documents [dkt. 353] and with the three Rule 30(b)(6) depositions I have mentioned.

Brandeis claims that the documents that Bremner produced do not describe how the ingredients of the accused products are handled before and during mixing. Brandeis

does not specify all of the manufacturing details it seeks, and the relevance of this information to its infringement and damages arguments is unclear. I shall therefore grant it relief only to the extent specified in its declaration [dkt. 374]. By Friday, November 2, Bremner shall (by deposition transcript, affidavit, or other documentation) disclose for each accused product the tolerances and quality controls that apply to its ingredients; the temperatures at which ingredients are stored, mixed, and baked; whether any ingredients are pre-mixed or vortated (which I understand to mean mixed while cooling); and whether any of these procedures have changed over the accused period. On or before Wednesday, November 7, I will entertain a motion by Brandeis to file a supplemental expert report one week later (on November 14) to address these additional facts.

Brandeis argues that it has been prejudiced by Topco's failure to have produced supplier agreements before the depositions, but Topco's vendor specifications, produced before the depositions, appear to provide the information Brandeis seeks. Brandeis also complains that there are discrepancies in the documents that describe production processes over time for each accused Bremner or Topco product. Whether the documents that have been produced (or any particular data entries) accurately reflect the process in use at a particular time is a question for the jury.



United States Circuit Judge

October 31, 2012